HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 652(S/S)2006

Cons. 55059 Suraj Mal,
S/o late Sri Mohan Singh,
46 Battalion P.A.C., Rudrapur,
District Udham Singh Nagar. s----
Petitioner.

Vs.

1. State of Uttaranchal through Secretary, Home Department,
   Uttaranchal Shasan, Dehradun,
2. Director General of Police, Uttaranchal Shasan, Dehradun,
3. Commandant, 46 Battalion, P.A.C., Rudrapur,
   Udham Singh Nagar,
4. Assistant Commandant, 46 Battalion,
   P.A.C., Rudrapur, Udham Singh Nagar. --- Respondents.

Sri K.K. Tewari, learned counsel for the petitioner,
Learned Standing Counsel for State of Uttaranchal.

Hon'ble M.M. Ghildiyal, J.

Heard Sri K.K. Tewari, learned counsel for the petitioner and learned Standing Counsel for the State of Uttaranchal/ respondents.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. Issue a writ, order or direction in the nature of certiorari quashing the impugned dismissal order dated 02.12.2005 (annexure no. 2 to the writ petition) passed by respondent no.3,

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner in service with all consequential benefits,

iii. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case,

iv. Award the cost of the petition in favour of the petitioners.

3. The petitioner, who was Constable in 46th Battalion, P.A.C., Rudrapur district Udham Singh Nagar, was terminated from service by the respondent no. 3 i.e. the Commandant, 46th Battalion, P.A.C. Rudrapur vide its order dated 02.12.2005.

4. Learned Standing Counsel has submitted that the petitioner has efficacious remedy by way of filing appeal before the Dy. Inspector General of Police and, as such, the petition is not, at all, maintainable. Counsel for the petitioner concedes the fact that an appeal is provided under the statute within a period of 90 days from the date of dismissal however, the prescribed period has already been expired and in the circumstances if the petitioner files the appeal the same will be dismissed being time barred.

5. In the circumstances, it is provided that if the petitioner chooses, he may prefer statutory appeal before the Competent Authority against the dismissal order within 15 days from today and the Competent Authority is directed to decide the appeal on merits considering the fact that the petitioner has chooses wrong forum against the dismissal order.

6. With this direction, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

May 15, 2006:
NCM: